

## Sample Options Letter for Resolving Medical/Employment Issues

Existing law requires an appointing power to make a reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee who is an individual with a disability, unless the appointing power can demonstrate that the accommodation would impose an undue hardship on the operation of its program. Effective January 1, 2001, the California Fair Employment and Housing Act was modified to require an appointing power to engage in a flexible, interactive process with an employee who may need an accommodation in order to determine whether the employee is entitled to an accommodation and, if so, what sort of reasonable accommodation would be appropriate.

The State Personnel Board is participating on a Disability Task Force, which consists of representatives of various departments, including the California Public Employees' Retirement System (PERS), Department of Corrections (CDC), Department of Industrial Relations (DIR), Department of Mental Health (DMH), Department of Fair Employment and Housing (DFEH), Department of Personnel Administration (DPA), and State Compensation Insurance Fund (SCIF), and various employee organizations, including the California Association of Highway Patrolmen (CAHP), California Correctional Peace Officers Association (CCPOA), California State Employees Association (CSEA), and California Union of Safety Employees (CAUSE). The Task Force is reviewing a number of issues relating to employees who have medical conditions that may affect their ability to perform their job duties.

The Disability Task Force has drafted a sample Options Letter, which can be used by an appointing power to apprise an employee, who appears to have a medical condition that impairs that employee's ability to perform the duties of his or her position, of the various options available to the employee, and to invite the employee to engage in an interactive process to develop an appropriate plan to resolve the employee's work-related medical issues.

***The sample Options Letter may be modified by an appointing power to fit the particular medical and reasonable accommodation issues that may exist in each individual case.***

The Board strongly encourages appointing powers to inform employees with medical conditions that may impair their ability to perform their job duties of their available options in a non-adversarial Options Letter and to engage in a flexible interactive process with employees to resolve medical/employment issues.

## MODEL OPTIONS/CONTACT LETTER

Name  
Address  
Address

Re:

Dear Mr./Ms.

The Department is in receipt of the [DATE] medical report of [DOCTOR'S NAME] which indicates that you are unable to perform the duties of your current position, [JOB TITLE], with this department. Therefore the following information is being provided for you to let you know of the various options which may be available to you. We invite you to engage with us in an interactive process to begin to develop an appropriate plan for resolving the issues raised in this report.

**PLEASE CONTACT ME BY [DATE] TO SET UP A MEETING TO DISCUSS THESE OPTIONS. A FAILURE TO DO SO MAY RESULT IN THE DEPARTMENT SELECTING AN OPTION FOR YOU.**

1. Return to Work

- a. Full duty: You may be able to return to work as a [JOB TITLE] performing full duty with no restrictions, if you provide a full medical release, in writing, from your treating physician. This medical release must be provided prior to your return to work.
- b. Reasonable Accommodation: If you believe that you are disabled and that a reasonable accommodation would enable you to perform the essential functions of your current position/classification, you may request a reasonable accommodation. If you are qualified and would like to pursue an alternate placement to another classification, for which you meet the minimum qualifications, a list of current job vacancies will be provided to you. You may indicate which positions you are interested in and you will be given an opportunity to demonstrate your qualifications for those positions.
- c. Medical Transfer/Demotion: If you are unable to perform the work of your current position, but are able to perform the work of another position in the Department, you may be able to medically transfer or medically demote to such a position. If at a later date you are no longer incapacitated for duty in your original position, under most circumstances, you would have a

mandatory right to reinstatement to that classification or an equivalent classification. This option is available through the provisions of Government Code section 19253.5.

## 2. Temporary Leave

- a. Family Medical Leave Act (FMLA)/California Family Rights Act (CFRA): If you qualify, you may request a leave of absence under either of these statutes. Both allow qualified employees to take up to 12 weeks of unpaid leave each year when they, or a qualified family member, have a serious health condition. You may be able to utilize existing leave credits. These statutes require that the employer maintain an employee's health, dental and vision coverage during such leave.
- b. Pregnancy Disability Leave: If you are unable to perform in your current position due to a disability related to pregnancy, you may be entitled to unpaid leave. Accrued leave credits may be available to supplement this leave.
- c. Medical Leave of Absence: You may request an unpaid medical leave of absence for up to one year. Under this option, the employer is not required to maintain an employee's health, dental and vision coverage. You may choose to pay for these benefits yourself.
- d. Leave Balances: You may be able to utilize existing leave balances, including a request for catastrophic leave.
- e. Temporary Assignment: A temporary assignment or loan of employees within an agency or between agencies not to exceed two years may be available to facilitate your return to work. You would have a mandatory right to return to your former position should this option be exercised.
- f. Non-Industrial Disability Insurance (NDI): If you have a non-industrial health condition, or a denied Workers' Compensation claim, which prevents you from working you may be entitled to NDI benefits. The NDI benefit is administered by the Employment Development Department (EDD). Your doctor must provide medical substantiation of your health condition in order for EDD to determine your eligibility for NDI benefits. While on NDI, health, dental, and vision benefits are covered.
- g. State Disability Insurance (SDI): SDI pays part of an employee's wages if they have to stop working because of a non-work-related illness or injury. SDI also covers an employee if they take time off due to pregnancy or childbirth, or to bond with a minor child (i.e., under age 18) within one year of its birth, adoption, or foster care placement. SDI also covers time off to care for a seriously ill child, spouse, parent, or domestic partner. You may

be eligible to receive SDI benefits while waiting for an approval for your worker's compensation claim. If your claim is approved, any SDI benefits received may be required to be repaid. SDI is an employee paid benefit and payments are administered by Employment Development Department (EDD). While on SDI, health, dental, and vision benefits are not covered.

- h. Temporary Total Disability/Industrial Disability Leave/Labor Code 4800 Time: If you have an accepted workers' compensation claim, you may be entitled to Temporary Total Disability, Industrial Disability Leave, or Labor Code 4800/4800.5 benefits. Health care benefits are continued while receiving these benefits. To determine your eligibility, please contact your Return to Work Coordinator, the State Compensation Insurance Fund adjuster assigned to your claim, or your Workers' Compensation attorney.

### 3. Separation from State Service

- a. Disability Retirement: If you are unable to return to work due to your health condition, you may apply for disability retirement with CalPERS. Disability retirement is considered a temporary separation from state service. Health benefits are available through CalPERS while you are on retirement status. If, after you are approved for disability retirement and, at a later date, it is determined that you are able to return to work as a [JOB TITLE], you will have mandatory rights to reinstatement to [JOB TITLE].

While you await the determination of your disability retirement application from CalPERS, you may use your existing leave credits, request FMLA/CFRA leave, or request a medical leave of absence. If you are eligible you may also apply for service retirement pending approval of your disability retirement.

- b. Service Retirement: If you are eligible, you may apply for service retirement with CalPERS. A service retirement is a permanent separation from state service. Health benefits are available through CalPERS while you are on retirement. You would retain permissive reinstatement rights to state service.
- c. Voluntary Resignation: You may choose to voluntarily resign from state service. You will retain permissive reinstatement rights. You may be able to purchase health, dental and vision benefits.

These options may not include all available legal options. If you have any other options that you would like to discuss, please let me know. If you do not respond to this letter or we are unable to reach a resolution, we may pursue one of the following options.

1. If you are able to work in an alternate classification, we may medically transfer or demote you to a currently vacant position for which you meet the minimum qualifications. We will make an effort to place you in the highest paying vacant position for which you are qualified, which is not promotional and which meets your medical restrictions.
2. If you are unable to perform the work of your present position and no position is available to which you could be medically transferred or demoted, we may pursue one of the following options.
  - a. Disability Retirement: If you have not pursued disability retirement but are eligible to apply, we may file on your behalf. While the application is pending, you may utilize your existing leave credits until exhausted. If you exhaust all of your leave credits prior to CalPERS determination, you will be paid by the Department a temporary disability allowance (TDA) equal to the estimated amount of your disability retirement benefit. Should CalPERS grant the disability retirement application, you would then receive the disability retirement allotment directly from CalPERS. If the disability retirement application is denied, you have a right to return to work, with back pay, less any TDA received.
  - b. Medical Termination: If you are not entitled to disability retirement or you waive your right to file for disability retirement, we may medically terminate you pursuant to Government Code section 19253.5.

We have attached a check sheet for you to indicate which options you would like to discuss when we meet. Please fill it out and return it to me prior to our meeting so that I can be prepared to discuss those particular issues with you. You may check all options that you are interested in.

**IF WE DO NOT HEAR FROM YOU BY [DATE], THE DEPARTMENT MAY BE PURSUING ITS OPTIONS, AS OUTLINED ABOVE, WITHOUT YOUR INPUT.**

Sincerely,

Name  
Title  
Phone number

Cc:

## OPTION DISCUSSION CHECKLIST

Name \_\_\_\_\_

THE FOLLOWING IS A LIST OF POSSIBLE OPTIONS. PLEASE CHECK AS MANY AS YOU WOULD LIKE TO DISCUSS.

- ☐ Return to work, with or without a reasonable accommodation
- ☐ Medical transfer/demotion to another classification
- ☐ Family Medical Leave/California Family Leave
- ☐ Pregnancy Disability Leave
- ☐ Medical Leave of Absence
- ☐ Use existing leave balances
- ☐ Temporary reassignment
- ☐ Non-industrial Disability leave (NDI) or State Disability Insurance (SDI)
- ☐ Temporary Disability/Industrial Disability Leave (IDL)/4800/4800.5 Time
- ☐ Disability Retirement
- ☐ Service Retirement
- ☐ Voluntary resignation

THE FOLLOWING DATES WOULD BE CONVENIENT FOR A MEETING. PLEASE CHECK ALL THAT WOULD BE AVAILABLE.

- ☐ (DATE)
- ☐ (DATE)
- ☐ (DATE)
- ☐ (DATE)

PLEASE RETURN IN ENCLOSED STAMPED ENVELOPE AS SOON AS POSSIBLE.